

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MICHAEL ROBERT HISCOX,

Petitioner,

vs.

MIKE MARTEL, Warden,

Respondent.

No. C 09-3477 PJH (PR)

**ORDER DENYING  
PETITIONER'S MOTION TO  
COMPEL AND EXTENDING  
TIME TO FILE TRAVERSE**

This is a habeas case filed pro se by a state prisoner. In the initial review order, the court dismissed several of petitioner's claims and ordered respondent to show cause why the writ should not be granted as to the remainder. Respondent has filed an answer and a memorandum of points and authorities in support of it, and has lodged the record with the court.

The makeup of the record is the subject of a pending motion to compel. Petitioner filed two motions to compel respondent to supplement the record. Respondent wrote to the court saying that he had provided some items requested by petitioner and that others did not appear to have been part of the record on appeal. The court denied the motions to compel as moot, but told petitioner that he could renew his motion to compel if he had not actually received the requested items.

Petitioner then filed another motion to compel, contending that certain items had not been produced. In his opposition, respondent agreed to furnish four of the requested items, but objected to being required to furnish three others. In reply, petitioner contended that some of the documents respondent had agreed to produce were not sent to him, and that the documents to which respondent objected should have been produced.

1 Respondent then wrote to the court stating that he was producing certain documents;  
2 petitioner responded in a letter saying that he had received listed documents, and that he  
3 was concerned that the produced documents be not only provided to him but also lodged  
4 with the court as part of the record. Petitioner does not contend in his most recent letter  
5 that he has not received any documents that are properly part of the record.

6 Because it appears that petitioner has received the requested documents, his  
7 motion to compel (document number 16 on the docket) is **DENIED** as moot. His motion for  
8 an extension of time to file his traverse (document number 18) is **GRANTED**. If petitioner  
9 wishes to file a traverse, he shall do so within thirty days of the date this order is served.

10 The Attorney General is requested to ensure that the record lodged with this court  
11 includes the entire record that was before the last state court to rule on each of the claims  
12 raised here. See *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011) (holding that in  
13 reviewing the reasonableness of a state court's decision to which § 2254(d)(1) applies, a  
14 district court may consider only on the record that was before the state court).

15 **IT IS SO ORDERED.**

16 Dated: September 12, 2011.



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PHYLLIS J. HAMILTON  
United States District Judge

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